



# CITY OF ANNA MARIA

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## MINUTES CITY COMMISSION SPECIAL MEETING JANUARY 15, 2015 – 6:00 P.M.

**Pledge of Conduct:** We may disagree, but we will be respectful of one another. We will direct all comments to the issues. We will avoid personal attacks.

### CALL TO ORDER

Chair Webb called the meeting to order at 6:00 p.m.

### PLEDGE TO THE FLAG

### ROLL CALL

**Present:** Mayor Dan Murphy, Vice-Chair Nancy Yetter, Commissioner Dale Woodland, Chair Chuck Webb, Commissioner Doug Copeland, and Commissioner Carol Carter.

**Also present:** Finance/Deputy Clerk II/Code Enforcement Diane Sacca, Interim City Attorney Ricinda Perry, and City Planner Alan Garrett.

**Press:** Sun and Islander.

General Public Comment regarding non-agenda items and items not scheduled for future agendas will be taken at the beginning of the meeting with a limitation of three minutes. The Commission's intent is that General Public comment is to be used for the public to inform the Commission of new issues within the City. Public Comment regarding agenda items will be taken with each agenda item with a limitation of three minutes.

### 1. General Public Comment - None.

### 2. McLean – Bert Harris Settlement Agreement – *Interim City Attorney Perry*

*Interim City Attorney Perry* referred to documents provided to the Commission relating to the property of Mark McLean and Katherine McLean, fka Katherine Hayes – Property at 114 Tern Drive.

Attorney Perry informed she had a number of phone calls and communications with the claimants Attorneys – Attorney Smith and Attorney Mackey, along with a conference call that involved Mr. and Mrs. McLean. It was noted Mr. and Mrs. McLean were in attendance at the meeting that evening. Discussion during the conference call involved why the agreement had not been approved = since it was the McLean's understanding it should have already been dispensed with. They also wanted to follow up on the \$700 cost for the appraisal. Attorney Perry indicated the \$700 appraisal cost was reasonable for filing a Bert Harris claim.

The Settlement Agreement approved in November 2014 was referred to. Former City Attorney Dye was tasked with writing the Settlement Agreement, working out the final details with the claimant's legal counsel, and bringing before the Commission for final approval. The McLean's desire was to settle under the original terms, with the addition of being reimbursed the \$700 appraisal cost that their attorney failed to inform Attorney Dye about. Attorney Perry felt it was a reasonable cost to include. She further informed that as part of the Settlement Agreement, it will close out all other claims that have been brought against the City. Details followed.

*Chair Webb* questioned if the claimant has a right to attorney fees and costs prior to a lawsuit being filed under Bert Harris. He also asked if now that a new offer had been requested, if it would serve as a rejection of the original settlement agreement, and also whether or not Attorney Perry felt the offer would be a 'bonafide offer'.

*Attorney Perry* informed that during the pre-suit, they cannot be awarded attorney fees. Also, it could be interpreted as a rejection of the original offer proposed and accepted by the City. Under Bert Harris, the settlement would make the claimants as whole prior to the adoption of the LAR Ordinance – thus, the court could interrupt as a bonafide offer.

Attorney Perry clarified the original costs agreed upon by the Commission in November 2014 was \$945.56. Including the \$700 for the appraisal (which Attorney Dye did incorporate and present to the McLean's counsel),

bring the total costs to \$1,645.56. (Allowing the McLeans to make the improvements as requested and grant the variance, along with paying the McLeans \$12,502.50 in attorney fees)

*Commissioner Woodland* felt there could have been better communication. He was in favor of approving the claim that evening.

*Commissioner Yetter* did not feel the McLean's were legally entitled to the attorney fees, stating the Commission was not given that information from the previous counsel. She was opposed to adding an additional \$700.

*Chair Webb* pointed out that the Commission had voted on the Settlement Agreement in November by making an offer to the claimant. The claimant has since come back with a counteroffer to include the \$700 amount - which he felt essentially is a rejection of the City's offer. He suggested the Commission approve staying with the original settlement offer. If the claimant rejects the original offer, Chair Webb said he saw it as an opportunity to save the City the \$12,502.50 amount. On the other hand, since the claimant rejected the Commission's original offer, it leaves the offer open.

*Commissioner Woodland* said it was his impression Attorney Dye had agreed to add the additional \$700 cost into the settlement. He said he would not be willing to have to go to court based on a \$700 amount.

*Chair Webb* noted that under Bert Harris, attorney fees are not allowed. Also, Attorney's never, as a rule, have settlement authorities. He said they never gave Attorney Dye any authority to bind the City with any settlement agreement. As a result, whatever was stated would not be binding on the City.

*Commissioner Copeland* stated he would like the cases finalized.

*Chair Webb* said every time the Commission does something like this, it encourages others. Discussion followed.

*Commissioner Yetter* commented that it appeared there was no backbone on the Commission. She did not feel the needs of the residents were being served. She stated she was totally disappointed in the lack of commitment and support of the members of the Commission.

- **Motion: Move to approve the McLean Settlement Agreement.**  
**Action: Moved by Commissioner Doug Copeland, Seconded by Commissioner Dale Woodland.**  
**Vote: On Roll Call Vote, the Motion carried on a vote of 3 to 2 with Chair Webb and Vice-Chair Yetter voting No.**

*Interim City Attorney Perry* asked for clarification for her office and the Mayor to have the authority to finalize, execute, and submit the Settlement Agreement, as necessary. Attorney Perry further noted there was a section reference that was improper in the Settlement Agreement in reference to where the City's LAR was codified under. The correct reference should state "codified at Section 114-753 114-222." She also asked that the motion be amended to make that correction.

- **Motion: Commissioner Copeland moved to amend the motion and include authorizing the Interim City Attorney and the Mayor to have the authority to finalize, execute, and submit the McLean Settlement Agreement as necessary, and that the Settlement Agreement be corrected to read "codified at Section 114-222" as referenced on page 2 of 6.**  
**Action: Motion amended by Commissioner Doug Copeland, Seconded by Commissioner Dale Woodland.**  
**Vote: On Roll Call Vote, the Motion carried unanimously.**

*Interim City Attorney Perry* asked the Commission to approve and authorize the filing of the Memorandum that codifies the Settlement Agreement with the Circuit Clerk.

- **Motion: Move to approve and authorize the filing of the Memorandum (relating to property of Mark McLean and Katherine McLean, 114 Tern Drive), with the Circuit Clerk.**  
**Action: Approved. Moved by Commissioner Carol Carter, Seconded by Commissioner Doug Copeland.**  
**Vote: Motion carried – All Aye.**

**3. Remaining Bert Harris Settlement Agreements – *Interim City Attorney Perry***

*Interim City Attorney Perry* stated the Commission had previously discussed the claims filed by Mr. Abrahamson - and putting those claims to final decision making. She asked for Commission direction of what they wished to do with the remaining claims, and what might be needed in order to move the matter forward.

*Chair Webb* informed the most a claimant is entitled to get whenever the City has changed a law taking something from them, is for them to fall under the original law. Details relating to the different claim requests followed.

*Planner Garrett* responded feeling some of the claims may be asking for more than what was allowed under the prior LAR.

**Abrahamson Claims**

*Commissioner Woodland* said he had assumed a settlement offer would be presented before the deadline. It was his opinion that property values had increased since the LAR Ordinance was passed. He felt in the Abrahamson cases, they got more than should have, and there was no incentive for them to extend the timeframe.

*Chair Webb* recommended presenting a bonafide offer of allowing them to build per the pre-LAR. Details relating to the process for determining damages followed.

*Attorney Perry* clarified the 1½ lots purchased after the LAR Ordinance took effect had been taken out of the Settlement Agreement.

*Commissioner Copeland* suggested a bonafide offer be made for all six cases that they be allowed to build pre-LAR.

*Attorney Perry* said it appears the offer presented by Attorney Dye had been with the pre-LAR. There were other Bert Harris claims that could have been offered - and they were willing to not include them. A second consideration was they wanted to follow the esthetics under the new LAR by utilizing the wedding cake style – by having the ability to keep the square footage, yet stay away from the box style. Plus, additional landscaping would be provided and they would drop all other Bert Harris claims they had.

*Chair Webb* reminded there was a deadline set for filing of the Bert Harris claims. Holmes Beach, on the other hand, did not set any deadline. He said according to Holmes Beach Commissioners, they are not getting any threats of Bert Harris claims.

*Chair Webb* noted the claimants are getting to build more square footage by the settlement agreement. *Planner Garrett* explained and Commission discussion followed. *Commissioner Woodland* stated the City currently has no analysis to base a decision on.

*Attorney Perry* interjected that the City does not have the advantage of doing due diligence on the claims - and cannot focus on the merits. Instead, the City is forced to move forward on what the Bert Harris Act and timeframes are. She had asked *Planner Garrett* if he had seen the calculations or numbers - which he had not. She did feel, however, the City had the time and due diligence to have the *Planner* confirm that the numbers being presented by the claimant are accurate.

*Planner Garrett* responded that at first glance, the numbers presented are larger. He agreed to review and get back with *Attorney Perry* with his results no later than the following Tuesday. Discussion followed.

**Kaleta Claims**

In relation to the Kaleta claims, *Attorney Perry* informed she had a number of communications with Mr. Kaleta's attorney Sean Kelly. Attorney Kelly has indicated he would agree to an extension if it was agreed that any right given to him by Attorney Dye would not be modified by the Commission. However, he was unable to articulate those 'rights' to Attorney Perry. Due to not being aware of the communications between Attorneys Kelly and Dye, Attorney Perry recommended there be no extension to the January 22, 2015 deadline.

Interim City Attorney Perry stated she was not comfortable agreeing to the option of the claimant having the rights under the pre-LAR Ordinance. She prefers the City Planner calculate what the square footage would have been allowed, and that it be put in writing. Also, that the documentation is flagged and placed in the City's Building Department files for future reference.

Attorney Perry asked for authorization from the City to have Planner Garrett work up what would be a development approval under prior LAR so it can be incorporated into the Settlement Agreement.

*Chair Webb* recommended Planner Garrett cite the old code provisions when doing the calculations.

*Planner Garrett* reminded that since the LAR was adopted, the City has changed the parking requirements.

*Attorney Perry* agreed, recommending an Exhibit B be included that incorporates the code language Planner Garrett was relying on. *Planner Garrett* stated he could begin working on them the following day.

Discussion followed. *Chair Webb* discussed the availability the City has for condemning a property.

*Attorney Perry* advised she felt a bonafide offer should be made that evening on the two Kaleta properties. She felt the offer being presented was very reasonable and a defensible offer in order to make them whole under the previous code. She also liked that the Commission was deciding to fine-tune what was allowed previously based on the figures to be provided by the City's Planner. The Abrahamson case, on the other hand, she felt needs further discussion.

- **Motion: Move to authorize the Interim City Attorney to prepare a bonafide settlement offer pursuant to Sec. 70 F.S. that will grant development rights in accordance with Section 114-222, prior to the adoption of Ordinance 13-754, by and between KPI 46<sup>th</sup> Street Development LLC, and the City of Anna Maria, and authorize the Interim City Attorney to present said offer to the claimant after conferring with the City Planner to prepare calculations.**

**Action: Approved. Moved by Commissioner Doug Copeland, Seconded by Commissioner Dale Woodland. Motion carried – All Aye.**

- **Motion: Move to authorize the Interim City Attorney to prepare a bonafide settlement offer pursuant to Sec. 70 F.S. that will grant development rights in accordance with Section 114-222, prior to the adoption of Ordinance 13-754, by and between Gulf View Retreat LLC, and the City of Anna Maria, and authorize the Interim City Attorney to present said offer to the claimant after conferring with the City Planner to prepare calculations.**

**Action: Approved. Moved by Commissioner Carol Carter, Seconded by Commissioner Doug Copeland. Motion carried – All Aye.**

*Interim City Attorney Perry* asked if the Commission wished to reject or rescind the KPI 46<sup>th</sup> Street Development LLC and Gulf View Retreat LLC Settlement Agreements as put forth by Attorney Dye.

- **Motion: Move to rescind any and/or all Settlement Agreements made by former City Attorney Dye at any time to KPI 46<sup>th</sup> Street Development LLC and to Gulf View Retreat LLC and/or their counsel.**

**Action: Approved. Moved by Commissioner Doug Copeland, Seconded by Vice-Chair Nancy Yetter. Motion carried – All Aye.**

*Attorney Perry* felt it was clear that Planner Garrett has been asked to prepare the calculations for all the remaining Bert Harris claims. She did not feel it was clear about whether or not the Commission was agreeing to the wedding cake with 50% lot coverage.

*Commissioner Copeland* responded that the trade-off would be allowing the wedding cake design.

Commissioner Copeland stated contrary to some of the objections for approving Attorney Perry as the City's Interim Attorney, he felt Mayor Murphy made a wise selection and that she had brought the Commission more information than they have had in a long time. The Commissioners all agreed.

*Chair Webb* discussed the Bert Harris claims and reminded that every time the City adopts an Ordinance - someone can see it as restricting their property rights. He noted the Government's job to ensure the health, safety, and welfare of its citizens.

Chair Webb informed that the Mayor is in the process of looking in to the City's Bert Harris insurance coverage. Chair Webb found information online indicating the City will have coverage. He also found where Travelers Insurance has umbrella coverage for municipalities that covers the same type claims.

Chair Webb felt in order to protect the community, the City needs to look ahead and be fiscally responsible by saving up some money. He provided the example if having \$500,000 in a segregated account that had been saved up over a number of years, the Bert Harris claims would then not be so frightening.

*Commissioner Woodland* pointed out since he's been on the Commission there have been a lot of lawsuits. To his knowledge, the City had always prevailed. Additional comments followed.

*Chair Webb* noted the City can further pursue licensing (certificate) - which with the Mayor's approval he would like Attorney Perry to research. He would like her to research what the City can charge to cover the cost of the program. Also, if future litigation costs would be included as part of those costs.

*Mayor Murphy* pointed out that Interim Attorney Perry was not the City's full-time Attorney.

Discussion followed. It was noted that Planner Garrett has started working on the Ordinance relating to the certificate program idea. Included within that Ordinance is occupancy, parking, solid waste, etc.

*Chair Webb* further suggested an attorney be hired on a retainer basis that would only handle Bert Harris claims.

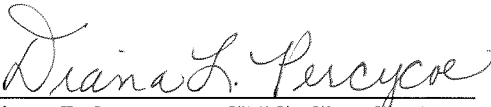
*Attorney Perry* agreed, feeling it would allow for a big costs savings for the City.

Commission discussion followed relating to the hiring of the full-time attorney. It was agreed the most important thing is to hire someone who protects the Anna Maria's citizens.

**Press Comment** – None.

#### **Adjournment**

**The meeting was adjourned at 7:31 p.m.**

  
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Diana L. Percycoc, CMC, City Clerk

**Minutes approved:** 2/26/15